

REMARKS

Applicant respectfully requests the Examiner to reconsider the present application in view of the above amendments and following remarks:

1. Drawings:

The drawings are objected to because of line quality. Applicant desires to comply with the Examiner's request, and shall, at the appropriate time, provide corrected drawings to overcome the Examiner's rejection. Nevertheless, Applicant respectfully requests the Examiner to initially address the substantive issues relating to the status of the claims, as discussed below, i.e., in an Advisory Action, so that Applicant will know in advance whether the application is allowable (on the substantive issues) before having to obtain the formal (final) drawings. Once the Advisory Action is entered, Applicant respectfully requests an opportunity to amend and correct the drawings, so that a notice of allowance can be entered in this case.

2. Section 112 Rejection:

Claims 21, 25, 34, and 37 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, and second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Because Applicant has canceled these claims, this rejection is no longer applicable and should be withdrawn.

3. Section 102 Rejection:

Claims 21-25 and 29 stand rejected under 35 U.S.C. 102(b) as being anticipated by an article entitled "Extensions to and refurbishment of Menlyn Park Shopping Centre, Pretoria," by Higgs (hereinafter "Higgs").

Although Applicant disagrees with the Examiner's contentions, Applicant has, nevertheless, in the abundance of caution, canceled claims 21-25 and 29, and therefore, this rejection is no longer applicable and should be withdrawn.

4. Section 103 Rejections:

Claims 26-28 have been canceled, and therefore, any rejection based on 35 U.S.C. 103(a) with respect to claims 26-28 is no longer applicable and should be withdrawn.

Claims 30-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of U.S. patent no. 6,832,452, issued to Simens (hereinafter "Simens").

Claim 39 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of Simens in further view of Herzfeld et al.

In rejecting the claims, the Examiner asserts that Higgs fails to disclose a multi-level parking garage having a second top floor thereon, wherein an events center is located on top of the second parking garage, but that Simens teaches using a huge exhibition hall or convention center at levels 7-10, and an elevated football stadium at levels 13-18, and therefore, that it would have been obvious to modify Higgs so that the events center was located on top of the second garage.

Applicant, however, disagrees with the Examiner's contentions, insofar as Simens is not prior art under 35 U.S.C. 103(a). Applicant respectfully submits that the Examiner's rejection, based on Simens, is not applicable to this case, insofar as Applicant conceived the claimed invention and reduced the claimed invention to practice prior to the effective filing date of Simens.

The facts supporting Applicant's conclusions are set forth in the attached Declaration Under 37 C.F.R. 1.131 (hereinafter "Declaration"), in which Applicant "swears behind" the Simens patent. In the Declaration, Applicant provides evidence that he was clearly in possession of the claimed invention prior to the effective filing date of Simens.

Simens was filed on July 28, 2002, and claims the benefit of the filing date of U.S. provisional application no. 60/308,473, filed on July 28, 2001. Therefore, the earliest effective filing date, for purposes of determining whether Simens is prior art to Applicant's invention, is July 28, 2001.

Applicant's original application (i.e., U.S. application serial no. 09/985,341), from which the present application claims priority, was filed on November 2, 2001 (hereinafter "the '341 application"). Nevertheless, in the Declaration, Applicant submits evidence that Applicant conceived the invention before the effective date of Simens.

First, Applicant submits a copy of a fax dated March 9, 2001, wherein Betty Webster, an employee of Applicant's company, faxed a copy of the drawings (that were ultimately incorporated into the '341 application) to Applicant's attorney, Mr. John

Shimazaki. The cover letter specifically indicates the date of the fax, i.e., 3/9/01, both hand written on the cover sheet, and printed by the fax machine along the top. Moreover, each page of drawings contains a similar marking along the top, indicating that the fax was sent on March 9, 2001.

These fax drawings form the basis for the drawings submitted in the '341 application, and therefore, clearly indicate that Applicant conceived the invention well before the July 28, 2001 effective filing date of Simens. In particular, it can be seen that the drawings clearly show a shopping mall with two parking garages, one with a drive-in movie theater on top, and another with an events center (referred to as "Menlyn Events") on top, wherein both are connected to the shopping mall or other complex.

In the Declaration, Applicant also attaches a copy of a written description made by Applicant's attorney, dated March 21, 2001, containing a description of the drive-in theater, mall and events center combination. This description clearly shows that the combination of the shopping mall, with a drive-in movie theater and events center, located on top of two parking garages, as specified in Claim 30, was conceived before the effective filing date of Simens.

Applicant further submits that Applicant diligently filed the '341 application later that year, i.e., by November 2, 2001, and therefore, the due diligence requirements of 37 C.F.R. § 1.131(b) have been satisfied. The invention was also reduced to practice in South Africa, a WTO member country, by the effective filing date of Simens.

For the above reasons, Applicant respectfully submits that Simens is not prior art to Applicant's claimed invention, and therefore, cannot be relied upon by the Examiner in rejecting the claims.

Moreover, because the Examiner admits that Higgs fails to disclose a multi-level parking garage having a second top floor thereon, wherein an events center is located on top of the second parking garage, and Simens is not prior art, Applicant respectfully submits that the Examiner's grounds for rejecting Claims 30-39, as set forth in the Final Office Action, are no longer applicable and cannot stand.

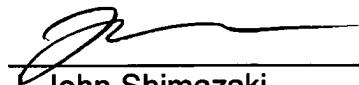
Accordingly, Applicant respectfully submits that Claims 30-33, 36 and 38-39, as amended herein, are in condition for allowance, and earnestly requests the Examiner to enter a Notice of Allowance, subject to correcting the drawings.

3. Conclusion:

For all of the above reasons, Applicant respectfully submits that the claims pending in this application are in condition for allowance, and, subject to having an opportunity to amend and correct the drawings, earnestly requests the Examiner to enter a Notice of Allowance in this case.

Respectfully submitted,

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